

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JOE NATHAN DAVIS,

Petitioner,

v.

Civil Action No. 5:07CV4
(STAMP)

DOMINIC GUTIERREZ,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

On January 8, 2007, the petitioner filed an application for habeas corpus pursuant to 28 U.S.C. § 2241, seeking an order directing the Bureau of Prisons to transfer him to a Community Corrections Center ("CCC") for the last six months of his term of imprisonment. The petition was referred to United States Magistrate Judge John S. Kaull for an initial review and submission of proposed findings of fact and recommendation pursuant to Local Rule of Prisoner Litigation Procedure 83.09.

Following an order directing the respondent to show cause, the respondent filed a response to the order to show cause and a motion to dismiss to which the petitioner filed objections. Upon review of the petition, motion to dismiss and objections thereto, the magistrate judge issued a report and recommendation recommending that petitioner's § 2241 petition be dismissed as moot. The magistrate judge informed the parties that if they objected to any portion of this report, they must file written objections within

ten days after being served with copies of this report. To date, no objections have been filed.

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. As to those portions of a recommendation to which no objection is made, a magistrate judge's findings and recommendation will be upheld unless they are "clearly erroneous." See Orpiano v. Johnson, 687 F.2d 44, 47 (4th Cir. 1982); Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979). Thus, the report and recommendation of the magistrate judge in this case will be reviewed for clear error.

Because, during the pendency of this case, the petitioner has already been transferred to a CCC facility, the magistrate judge found that the petitioner's § 2241 petition should be dismissed as moot. This Court finds no clear error in the recommendation of the magistrate judge. The petitioner has already received the relief requested in his § 2241 petition.

Accordingly, this Court hereby AFFIRMS and ADOPTS the magistrate judge's report and recommendation in its entirety. The petitioner's § 2241 petition is DISMISSED as MOOT and the respondent's motion to dismiss is DENIED. It is ORDERED that this case be DISMISSED and STRICKEN from the active docket of this Court. Under Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985), the petitioner's failure to object to the magistrate judge's

proposed findings and recommendation bars the petitioner from appealing the judgment of this Court.

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the petitioner and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: July 6, 2007

/s/ Frederick P. Stamp, Jr. _____
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE